IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.91 OF 2001.

Shri Vallabhji Gansi Gala
& Anr. : Appellants.

versus

Bhimsen Tayappa Kumbhar
& ors. : Respondents.

Mr.M.G.Barve for the appellants.
None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 2nd February 2005.

ORAL ORDER

1. Heard advocate for the appellants who are the parents of deceased Neeta. At the time of accident she was 18 years of age and was taking education. She was hale and hearty and used to help her father in his grocery business where she

was getting Rs.1000/- per month. She was also earning Rs.1500/- per month from different sources i.e. by taking private tuition and tailoring. The father has filed on record before the tribunal the income tax return where her income for the Assessment Year 1992-93 was shown as Rs.31,400/-.

2. The parents of deceased Neeta were claiming Rs.3,25,000/-. The tribunal awarded Rs.59,000/- only including the amount received under no fault liability. The tribunal calculated Rs.1200/- of her monthly income from all the sources and gave deduction of Rs.300/- per month for her own maintenance and, therefore, as per the order of tribunal whatever she was spending per month for her family was Rs.900/-; Multiplier of 4 was applied and, then Rs.44,000/- were awarded on that count. In addition Rs.15,000/- were given for loss of love and affection and for funeral. It is this order that is challenged by the claimants, who are the parents, in this appeal.

3. The counsel for the appellants contended that when the parents, in order to prove the

income of Neeta, have filed income tax return, then there was no scope for the court to held that the income of Neeta was Rs.1200/- per month. He also pointed out that in the claim petition the claimants have claimed compensation up to the age of 28 years of deceased Neeta i.e. till her marriage. Secondly, he contended that applying multiplier of 4 was totally wrong and even looking to the age of the parents on the date of claim petition, i.e. 47 years and 42 years of both father and mother respectively, multiplier of 16 should have been adopted by the Court.

4. It is true that Neeta died at the age of 18 years and she was taking education. Inordinarily the theory of parents that she was earning something like Rs.2600/- to Rs.3000/- per month would not have been believed by the Court. However, the claimants have filed income tax return, as stated above, and therefore, it cannot be doubted that Neeta had independent earning and, in the year 1992-93 her earning was Rs.31,400/- for which she had paid tax also to the extent of Rs.2300/-.

5. Counsel for the appellants pointed out

that the father of deceased Neeta was the businessman and, both the father and mother were the tax payers and, therefore, keeping in tune with family trade and business, the Neeta, after her earning crossed the income tax limit, paid the income tax.

6. Therefore, in view of the income tax return, Neeta's earning had to be somewhere around Rs.2,500/- per month on the date of accident. Applying multiplier of 4 was totally wrong and, since the parents have claimed compensation only for 10 years i.e. up to 28 years of age of Neeta, had not she died, then claiming compensation of Rs.3,25,000/-, out of which Rs.3,00,000/- is for loss of future earning; Rs.10,000/- for loss of love and affection, Rs.10,000/- for mental agony and Rs.5,000/- for funeral expenses, appears to be most reasonable. The tribunal was not justified in awarding Rs.59,000/- only. Hence the order.

:ORDER:

The appeal is allowed. The order of the tribunal is modified.

The claimants shall be entitled for compensation of Rs.3,25,000/- from the respondents excluding the amount they have already recovered with interest at the rate of 9% from the date of application till payment and the costs of the appeal.

[D.G.DESHPANDE]

02/02/2005 JUDGE.